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January 5, 2005

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2005-1 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions of existing annotations (indicated by ~~strikeout~~ and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Monday, February 7, 2005**. These may be sent by e-mail using the "Comments Form" on the Board's Web site (www.boe.ca.gov/proptaxes/cld.htm), fax, or mail. Or, here is the mailing address:

Board of Equalization
Assessment Policy and Standards Division
ATTN: Annotation Coordinator
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Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, they will be printed in Volume 3 of the Property Taxes Law Guide. At that time, the CLD becomes obsolete.

Copies of the backup correspondence are available by e-mail using the "Comments Form" on the Board's Web site (www.boe.ca.gov/proptaxes/cld.htm). If you have any questions, please contact Glenna Schultz at (916) 324-5836.

Sincerely,

/s/ *David J. Gau*

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG/grs
Enclosure

PROPERTY AND SPECIAL TAXES DEPARTMENT

PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2005-1

January 5, 2005

220.0000 CHANGE IN OWNERSHIP

220.0364.005 Life Estate—Personal Lifetime Right of Occupancy. One joint tenant conveys her joint tenancy interest in real property to the other joint tenant and pursuant to a separate written agreement, the transferor retains a personal lifetime right of occupancy in the residence until her death. Under this agreement, the transferee may not sell or transfer the residence during the transferor's lifetime; the transferor is responsible for the mortgage payments, taxes, utilities, maintenance and other costs associated with the residence during her lifetime; the transferee may occupy the residence or rent the residence to a third party only if the transferor is absent from the residence due to the need to move to a hospital or nursing home; if the residence is rented, the transferor is to receive the net proceeds from the rental of the residence.

The transferor retains the present beneficial use of her interest in the property, which includes the right to occupy real property or the right to receive the income produced by real property. Therefore, the transfer did not result in a change in ownership because the transferor's retained interest is equivalent to a life estate in the property. C 8/18/2004.

230.0000 CHURCH EXEMPTION

230.0026 Leased Land. Property that is leased by a church or religious organization from a for-profit entity may qualify for the church exemption under Revenue and Taxation Code section 206. However, the church exemption requires that the property be used primarily for religious worship and that all other uses of the property are incidental and necessary uses supportive of the primary religious worship use.

A non-profit corporation leased land from a for-profit entity to build a Roman Catholic school of less than collegiate grade. Although the school intends to hold Roman Catholic mass for the students in the gymnasium, performing arts center and outside plaza, these buildings will not be used primarily for religious worship. Instead, the primary use of these buildings is for various sports and student activities unrelated to religious worship. Therefore, the leased land on which the buildings are located do not qualify for the church exemption. C 7/30/2004.

390.0000 ESCAPE ASSESSMENTS

390.0025 Decline in Value. Revenue and Taxation Code section 51(b)(2) requires that real property be assessed at the lower of its factored base year value or current fair market value. When the lower fair market value is enrolled, section 51(e) requires the assessor to annually review the value and make adjustments each year as the market dictates. If an assessor fails to make an annual adjustment to reflect an increase in value, the enrolled

value for that year is incorrect due to an error involving the exercise of value judgment. Revenue and Taxation Code section 4831(a) precludes the assessor from making roll corrections to reflect value increases if the error resulted from the exercise of value judgment. Therefore, an assessor cannot make escape assessments to increase prior years' values when the reason for the escape assessment is an error involving the exercise of value judgment, because the assessor has no statutory authority to make the roll corrections. The statutory authority that is a precondition of an escape assessment to increase a prior years' value does not exist. C 8/24/2004.

500.0000 HISTORICAL PROPERTY

500.0030 New Construction. Revenue and Taxation Code section 439.1 specifies that "restricted historical property" that qualifies for restricted valuation under 439.2 means qualified historical property under Government Code section 50280.1 subject to a historical property contract. Under section 50280.1, a "qualified historical property" is privately owned property which is not exempt from taxation and is listed either in the National Register of Historic Places or in any local official register of historical or architecturally significant sites or is located in a registered historic district. The subject property was described in the historical property contract as "a building, structure, object, site or district as defined in National Register Bulletin 15" under the governing local ordinance. Section IV of the National Register Bulletin 15 specifies that buildings eligible for the National Register must include all their basic structural elements. A newly constructed building, such as a garage, that does not include the basic structural elements of an existing historical building does not qualify as enforceably restricted historical property subject to valuation under Revenue and Taxation Code section 439.2. C 8/3/2004.

620.0000 OPEN-SPACE LANDS

~~620.0001 Cancellation Fees and Charges.~~

~~1. The cancellation value of property subject to an open-space contract being cancelled is the "taxable value." "Taxable value" is the factored base year value of the property as if unrestricted or the current full cash value of the property as if unrestricted, whichever is less.~~

~~2. The cancellation fee is 12 1/2 percent of the cancellation value. (Government Code Section 51283). As the result of Government Code Section 51240, however, a city or county may, by the terms of a contract, require payments or fees that exceed 12 1/2 percent of the cancellation value.~~

~~3. The calculation of a deferred tax charge may result in the collection of a supplemental fee (Government Code Section 51283.1). To determine the amount, if any, of such fee, the assessor must establish four different values:~~

~~a. "The unrestricted assessed value, . . ." This value is the factored base year (Property Tax Rule 460) full cash value as if unrestricted or the current full cash value as if unrestricted, whichever is less.~~

~~b. "The current restricted assessed value," This value is the value determined in accordance with Revenue and Taxation Code Section 423. (The lesser of the currently computed restricted value and the factored base year—article XIII A of the California Constitution—value as if unrestricted.)~~

~~c. "The base year unrestricted assessed value," In this context the term "base year" is not the same as the base year defined in Property Tax Rule 460. For contracts in existence for ten years or less, this value is the assessed value for the year prior to the initiation of the enforceable restriction. For contracts in existence for more than ten years, this value is calculated by interpolation as prescribed in Government Code Section 51283.1(a)(3)(B).~~

~~d. "The base year restricted assessed value," As in (c), the term "base year" is not the same as the base year defined in Property Tax Rule 460. For contracts in existence for ten years or less, this value is the assessed value for the first year of the enforceable restriction. For contracts in existence for more than ten years, this value is calculated by interpolation as prescribed in Government Code Section 51283.1(a)(4)(B).~~

~~Section 51283.1 was not in effect until January 1, 1979, however, and is not applicable to contracts entered into prior to that date. LTA 1/22/82 (No. 82/10); LTA 4/23/82 (No. 82/65).~~

Parts of this annotation are obsolete due to law changes; Government Code section 51283.1 was repealed effective January 1, 1987.